

**AMENDMENTS to the DRAWINGS**

No amendments or changes to the Drawings are proposed.

## **REMARKS**

### **Rejections under 35 U.S.C. §103(a)**

We appreciate the Examiner's withdrawal of the rejections under 35 U.S.C. §103(a) over Dinwoodie in view of Montgomery in view of our amendment.

### **Supplemental IDS**

We are unable to determine if the Examiner has reviewed the references we submitted by Information Disclosure Statement on 07/07/2008. Our supplemental Information Disclosure Statement contained extrinsic evidence of the on-going analysis and debate about how humans and automated bidding proxies interact, negatively and positively, with each other in an auction environment. We believe it supports our arguments for non-obviousness, especially in view of the *KSR* decision.

### **Rejections under 35 U.S.C. §112**

With respect to the rejections of Claims 1 - 4 under 35 U.S.C. §112, first paragraph, we respectfully disagree, and respectfully submit that our amendment is supported both by our specification and by the extrinsic evidence as submitted in our supplemental IDS.

The added limitation which is the subject of the rejection is:

. . .

wherein said steps of automatic checking, determining and placing a counter bid produce delay paced proxy bidding by specifying a counter bid delay value that does not escalate said pace of bidding within said auction system by automated placing of said counter bid.

We believe the first portion of the limitation ". . . wherein said steps of automatic checking, determining and placing a counter bid produce delay paced proxy bidding . . ." is not contested by the Examiner because it refers to the previously-existing steps which have not been heretofore rejected under 35 U.S.C. §112, first paragraph. We believe that it is the portion ". . . by specifying a counter bid delay value that does not escalate said pace of bidding within said auction system by automated placing of said counter bid" to which the rejection is directed. If this is not correct, we respectfully request clarification from the Examiner.

Teaching Use of the Invention. By "escalate" a pace of bidding, we mean to "increase" the pace of bidding (e.g. decrease the time interval between counter bids):

Main Entry:	<b>escalate</b>
Part of Speech:	verb
Definition:	<b>increase, be increased</b>
Synonyms:	amplify, ascend, broaden, climb, enlarge, expand, extend, grow, heighten, intensify, magnify, make worse, mount, raise, rise, scale, step up, widen

(Source: Thesaurus.com, retrieved on 12/15/2008 from <http://www.thesaurus.reference.com>)

We believe that it is agreed upon in the art that escalation of the pace of bidding in an auction usually benefits the offeror, and is detrimental to the bidders, because a higher price is usually reached in an auction when bidding and counter-bidding occurs rapidly. For example, we discussed this phenomenon of **escalated** bidding in our background of the invention (our emphasis added):

[0019] The related applications disclosed an online, business-to-business offering system which also provided a proxy agent function that allowed a participant to specify a maximum proxy value for the system to automatically execute on behalf of the participant. In this case, the software agent polls the current status of the bid level in a particular offer or auction, and **immediately places a bid higher than the highest competitive bid** until the proxy maximum has been reached.

[0020] While this is efficacious in many respects, especially by allowing the participant to automatically "top" the current bid while not being personally involved in the bid placing, **it has some potential shortcomings.** The most notable of which is the possibility that two (or more) automatic proxy agents may bid against each other, **submitting increasing bids as quickly as possible given the computing and communications resources allow.** Thus, **the bidding would rapidly escalate** until all but one of the proxy agent's maximum limit has been reached.

[0021] This is analogous to a very wealthy participant sending an agent to an auction with a very high proxy limit, and when the bidding opens, the agent quickly escalates the bidding to his maximum limit. This experience may be seen negatively by the other participants of the auction, taking much of excitement and sense of adventure out of the process for the losers. This can **lead to dissatisfaction and**

disillusionment in the process itself, and these unsatisfied participant's may choose not to be involved in future auctions. [0022] A "real" or live proxy agent usually understands this problem, and will conduct himself in a less conspicuous manner. For example, he may wait to sense the "pace" of the bidding, only placing higher bids after some delay has occurred from the last placed bid. Or, he may wait until a time near the closing of the auction to place a higher bid, allowing other participants to bid against each other during the interim. However, to date, this problem has not been addressed by online auction and offering systems. [0023] Therefore, there is a need in the art for a system and method which allows a participant in an online auction or offering process to create a proxy agent with instructions for the pace, timing, and limits of automatic proxy bidding.

So, we believe that our background of the invention establishes to one of ordinary skill in the art that an object of our invention is to provide an automated proxy bidding agent which does not blindly immediately respond to a counter bid which may then, if there is a second automated proxy in the auction, result in rapid counter-bidding (e.g. escalation of the bidding pace).

We believe our terminology of escalation and bid pace are appropriate and consistent with that of the art, for example (our emphasis added):

"Our focus is on two key aspects of the intensity of competition in an auction on consumers' product valuations: (1) the frequency of arrival of others' bids and (2) the perceived total number of bidders participating in the auction. We propose that an auction participant's experienced level of bidding frenzy increases as the pace at which others submit bids increases and as the perceived number of bidders decreases." (Source: Häuble and Leszczyc in "Bidding Frenzy: Intensity of Competitive Interaction Among Bidders and Product Valuation Auctions", copy provided in our supplemental IDS)

And:

"The activity rules have two functions. First, they create pressure on bidders to bid actively, which increases the pace of the auction. . . ." (Pg. 4, first full paragraph)

...

"In designing the auction, one of the concerns was to estimate how long the auction would take to complete. This, in turn, depended on forecasting how aggressively bidders would behave. Could one count on the bidders to move the auction along, perhaps to economize on their own costs of participating? Or, would the bidders sometimes have a

**strategic incentive to hold back, slowing the pace of the auction substantially?** (Pg. 12, fifth paragraph)

There were several reasons to be **skeptical that the bidders themselves could be relied upon to enforce a quick pace.** In the mutual substitutes model analyzed earlier, **there is no affirmative gain to a bidder from bidding aggressively early in the auction,** since all naïve bidding paths lead to the same competitive equilibrium outcome. So, **bidders with a positive motive to delay might find little reason not to do so. . . .** " (Pg. 12, sixth paragraph)  
(Source: Milgrom, "Putting Auction Theory to Work: The Simultaneous Ascending Auction", copy provided in our supplemental IDS)

We believe that this extrinsic evidence establishes that (a) it was well known in the auction field that faster paces of bidding tends to be beneficial to the auctioneer/offeree and detrimental to the bidder(s), (b) auctioneers would like to increase the pace of bidding when possible, but (c) bidders would prefer to keep bidding at an even pace.

Therefore, we believe the objective of our invention (e.g. when to use our invention) was conveyed in a manner which one of ordinary skill in the art would understand.

**Enablement.** With respect to enablement, we respectfully ask the Examiner consider the definition of "escalation" which is to "increase" the pace of the bidding. If a pace is maintained at an even pace (e.g. no increase or decrease in the time between counter bids), then the pace would not be said to be "escalated".

Our invention enforces an even, non-escalating automated counter-bid pace (emphasis added):

[0058] **Delay Paced Proxy Bidding**

[0059] Table 1 shows the enhanced bid parameter format for placing a bid with delay paced proxy options:

TABLE 1

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Bid Parameters with Delay Paced Proxy  
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```
auction_name="IOGB hard drives, SCSI", initial_bid="$10.00",
maximum_bid="$45.00", delay_pace="10 min", increment="$1.00"
<CR>
auction_name="floppy drives, USB", initial_bid="$2.00",
maximum_bid="$6.50", delay_pace="20 min", increment="$0.25"
<CR>
```

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[0060] According to this example bid, shown in comma separated variable ("CSV") format, the proxy agent would

initially place a bid into a specified auction, such as the "10 GB hard drives" auction, for an initial bid value, such as \$10.00. It would then periodically monitor the highest bid placed in this auction, wait until no higher bids have been placed for at least a specified delay pace period, such as 10 minutes, and then place a new bid equal to the current highest bid plus a specified increment, such as \$1.00. If the proxy agent reaches its maximum authorized bid, such as \$45.00 in this example, it would not place any further bids. [0061] Table 1 shows a second example for an auction for another commodity, paced at 20 minute bid intervals. As such multiple bids for multiple offerings or auctions can be processed by a single proxy agent, given that the periodic resumption rate of the proxy agent instance is equal to or less than the shortest specified bid period. For example, if a bid delay is specified of 30 seconds, the proxy agent preferably is resumed and run at least every 30 seconds or more often.

In these paragraphs, we respectfully submit that one of ordinary skill in the art could determine (a) how to use the invention (e.g. how to configure the counter bid delay to create an even, non-escalated pace of bidding), and (b) how to create a logical process such as a software program executed by a computer to periodically monitor the highest bid in an online auction, implement a delay to counter bid, calculate the next counter bid, and place the next counter bid into the online auction.

Please also see Figure 3 "proxy controls" (#34) for an illustrative example of these controls, and Figure 4 (#45 time reference, #43 bid checking, #44 decision to place a counter-bid, #46 placing of counter bid, and #47 waiting for bid delay time to check and counter bid to achieve even pace). We ask the Examiner to reconsider paragraph [0056] which describes the logical process to monitor bids and place delayed counter bids according to pace controls, and paragraphs [0071] - [0074], which describe a user interface to set the proxy controls including the pace control parameters.

Possession of the Invention. We believe these passages, figures and tables sufficiently convey to one ordinarily skilled in the art that we were in possession of the invention, especially regarding the technology to avoid triggering an escalation of a bidding pace.

We respectfully submit that our claims meet the requirements of 35 U.S.C. §112, first paragraph. We respectfully request allowance of the claims.

**Request for Determination of Skill Level**

One aspect of the requirements under 35 U.S.C. §112, first paragraph, revolves around "any person skilled in the art". The courts have held that this refers inherently to "ordinary skilled" persons.

There has been no determination of ordinary skill level, nor has there been any rejections under 35 U.S.C. §103(a) which might include an indication of ordinary skill level.

If the rejections under 35 U.S.C. §112, first paragraph, are maintained, we respectfully request an explicit determination by the Examiner of ordinary skill level in the art at the time of our invention. We believe that this is necessary to know in order to appropriately determine if our disclosure would meet 35 U.S.C. §112 requirements.

**Request for Indication of Allowable Subject Matter**

We believe we have responded to all grounds of rejection, but if the Examiner disagrees, we would appreciate the opportunity to supplement our reply.

We believe the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, we respectfully request recommendations per MPEP 707.07(j) II which would place the claims in condition for allowance without need for further proceedings. We will respond promptly to any Examiner-initiated interviews or to consider any proposed examiner amendments.

Respectfully,

*/ Robert Frantz /*

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